

**FILED/ACCEPTED**

**DEC 22 2008**

Federal Communications Commission  
Office of the Secretary

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Ronan Telephone Company

Request for Waiver and Extension of  
Time of Tribal Lands Bidding Credit  
Construction Requirement for  
a Lower 700 MHz Band License

WT Docket No. 06-231

WAIVER - EXPEDITED ACTION  
REQUESTED

To: The Commission

**RONAN TELEPHONE COMPANY  
REQUEST FOR WAIVER AND EXTENSION OF TIME OF  
TRIBAL LANDS BIDDING CREDIT CONSTRUCTION REQUIREMENT  
FOR A LOWER 700 MHZ BAND LICENSE**

Ronan Telephone Company (hereinafter, RTC) hereby respectfully moves the Federal Communications Commission (FCC), and requests an Order approving a waiver and extension of time to meet the 700 MHz tribal lands bidding credit (TLBC) construction/build-out requirement for the Blackfeet Indian Reservation in Montana (Lower 700 MHz "C" Block License area- Montana RSA 1). FCC Form 601, and Schedule L, accompanies this Motion. This Motion is based upon 47 C.F.R. §§ 1.3, §1.925(3), 1.946(e), and the FCC's Orders in WT Docket No. 99-266, In the Matter of Extending Wireless Telecommunications Services to Tribal Lands.

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Ronan Telephone Company is a local exchange carrier located in Ronan, Montana. RTC was the winning bidder in Auction No. 44 for the Lower 700 MHz "C" Block License Montana RSA-1 (CMA 523), Call Sign WPZK450, which encompasses the Blackfeet Indian Reservation in Montana. As part of the license grant, RTC received a Tribal Lands Bidding Credit of half of the gross winning bid.

The construction requirement on the Blackfeet Indian Reservation was originally three years from the date the license was issued, i.e. until January 29, 2007 (to offer service accessible to 75% of the population), *See*, 47 C.F.R. §1.2110(f)(3)(vii) . However, due to a number of circumstances, in November, 2006, RTC filed a Motion requesting an extension of the construction requirement. The Commission, after consideration, granted a one year extension, until January, 2008; Order, DA 07-248 (January 26, 2007). RTC filed another Motion for Extension in November, 2007. The Commission thereafter granted an extension until January 29, 2009. Order, DA 08-156 (January 24, 2008).

Due to a variety of circumstances described herein, RTC finds it necessary to request another extension of the construction requirement. RTC therefore respectfully requests a waiver of FCC Rule 1.2110(f)(3)(vii), and an additional extension of the construction requirement for 12 months, until January of 2010.

## **BACKGROUND**

Ronan Telephone Company (RTC) is a local exchange carrier in Ronan, Montana; located on and serving the central area of the Flathead Indian Reservation of Western Montana, which is 80 air miles southwest of the Blackfeet Indian Reservation. RTC is a Montana Corporation that is privately owned by CommunityTel, Inc. (another Montana corporation that is the telecommunications holding company of the Preston family of Ronan, Montana). Neither CommunityTel nor RTC is affiliated with any Tribe or Tribal entity. RTC was the winning bidder in the FCC Lower 700 MHz "C" Block Spectrum

Auction (Auction No. 44) for three licenses, including the "Montana RSA 1 - Lincoln" (CMA 523) license area.<sup>1</sup> The Montana RSA 1 license area encompasses northwestern portions of the state of Montana, including the following counties: Lincoln, Sanders, Lake, Flathead, Glacier, Pondera, and Teton. The Blackfeet Indian Reservation lies within Montana RSA 1, within Glacier and Pondera Counties.<sup>2</sup> RTC received a Tribal Land Bidding Credit of \$182,000 for the Montana RSA 1 license. Unless RTC can certify that it is capable of serving 75% of the population of the Blackfeet Reservation within 30 days of January 29, 2009, it will be required to repay the Tribal Lands Bidding Credit (TLBC) of \$182,000, or its license will terminate. 47 C.F.R. §1.2110(f)(3)(vii). Therefore, unless an extension is granted, RTC will be required to repay the TLBC.

The Blackfeet Tribal Business Council (BTBC) is the governing body of the Blackfeet Nation on the Blackfeet Indian Reservation located east of Glacier National Park in Montana. Siyeh Development Corporation (Siyeh) is a federally chartered Corporation that is 100% tribally owned by the Blackfeet Tribe and controlled by the BTBC. Siyeh operates various tribal businesses on the Blackfeet Reservation.

Prior to Auction No. 44, RTC engaged in lengthy discussions with the Blackfeet Tribal Business Council, its planning staff and the management of Siyeh, regarding potential future telecommunications services on the Blackfeet Reservation and the prospects of RTC assisting the Blackfeet Tribe to use the 700 MHz license to offer improved telecommunications services on the Blackfeet Reservation. The BTBC, by Resolution dated December 16, 2002, certified RTC as eligible to receive the Tribal Lands Bidding Credit pursuant to 47 C.F.R. §1.2110(f)(3), for purposes of FCC Spectrum Auction No. 44.

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<sup>1</sup> Grant Date, January 29, 2004, Effective Date, March 26, 2004. A copy of the License is attached hereto as Exhibit A (Call Sign WPZK450).

<sup>2</sup> See attached Exhibit B, map of Blackfeet Indian Reservation.

RTC, Siyeh, and the BTBC have been working cooperatively to establish a telecommunications business on the Reservation utilizing the 700 MHz license. A new Montana Limited Liability Company named "Oki Communications, LLC" (Oki), (a partnership between CommunityTel/RTC and the Blackfeet Tribe (BTBC) through Siyeh) was formed in July of 2006 for the purposes of constructing and operating this new telecommunications business on the Blackfeet Reservation. Oki has been successful in planning, constructing and operating a 700 MHz transmitter site which now serves over close to 500 customers with high speed Internet services in the Blackfeet Reservation's principal community, Browning, Montana, including the immediate surrounding area, and the community of East Glacier Park (located 12 miles southwest of Browning and adjacent to the southeast corner of Glacier National Park). This compares with 325 customers that were being served a year ago, and 66 customers two years before.

## **LEGAL STANDARDS**

Waiver of an FCC Rule is appropriate "if the underlying purpose of the rule would not be served," or if application of the rule would be inequitable, unduly burdensome or contrary to the public interest; 47 C.F.R. §1.925(3). More generally, FCC Rules may be waived for "good cause"; 47 C.F.R. §1.3. With respect to wireless licensing, the FCC Rules and applicable Orders allow extensions of the construction deadlines to accommodate construction difficulties and extenuating circumstances:

(e) Requests for extension of time. Licenses may request to extend a construction period or coverage period by filing FCC Form 601. The request must be filed before the expiration of the construction or coverage period.

(1) An extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.  
47 C.F.R. §1.946(e)

FCC Orders have further discussed the grounds which can justify an extension of the construction requirements:

[w]e are willing to consider relaxing our buildout requirements in cases where parties can demonstrate that doing so will expedite deployment of service to tribal lands. We therefore encourage parties to file specific waiver requests if need be, and commit to consider such requests expeditiously. *Report and Order*, 15 FCC Rcd 11794, at ¶41 (2000)<sup>3</sup>

For example, there may be conditions, such as technical obstacles, economic factors, or other difficulties that may make it difficult for carriers to satisfy the stricter construction requirement. Circumstances may exist on remote tribal lands such as low population density, rough terrain, or other factors that can negatively effect the ability of carriers to provide the requisite coverage to facilities in those areas. *Second Report and Order*, 18 FCC Rcd 4775, at ¶22 (2003)<sup>4</sup> (emphasis added)

In particular, the record, though limited, suggests that underutilization of the tribal lands bidding credit program stems from technical obstacles, economic factors, difficulties obtaining certifications, and other problems, . . . In addition, we note that tribal lands may vary significantly with regard to population density, terrain and other such buildout factors which can affect the feasibility of building out facilities on tribal lands and account for the lack of service. We note, too, that should a carrier be unable to fulfill its construction requirements at the end of three years, it may seek a waiver from the relevant Commission rule. *Third Report and Order*, 19 FCC Rcd 17652, at ¶8 (2004)<sup>5</sup> (emphasis added)

Based on the above orders, the FCC has clearly recognized that a variety of special factors and extenuating conditions on tribal lands can affect the ability to build-out a license area within the required time frame, and that waivers are appropriate to accommodate these difficulties.

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<sup>3</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266, 15 FCC Rcd 11794, 11809 (June 30, 2000)

<sup>4</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783 (March 14, 2003).

<sup>5</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652 (September 2, 2004).

## CIRCUMSTANCES JUSTIFYING AN EXTENSION

Based on the above cited Rules and Orders, RTC respectfully requests an additional extension of the construction/build-out requirement in Rule 1.2110(f)(3)(vii) on the Blackfeet Indian Reservation, for the reasons described below:

The process of conceiving, planning, funding and implementing a new "tribal/private" partnership to provide wireless broadband data service on the Blackfeet Indian Reservation has turned out to be a grand adventure and a time consuming problem-solving exercise involving both the business and technical skills of RTC and the vision and dedication of the BTBC and the management and staff of Siyeh. Included in the problems addressed but not completely solved to date are: 1) the extreme variability of the population density of the reservation— more than half of the Reservation population lives in the community of Browning at typical suburban housing densities in the townsite, (and near these densities near the town) while the remainder of the reservation has an average population density of less than two people per square mile;

2) the Blackfeet Reservation is located in the downslope wind band of the Rocky Mountain Front east of Glacier National Park and the mountains directly south of the Park (known as the Badger-Two Medicine area). The Reservation experiences some of the strongest winds in North America. These windy conditions combined with the ravines and rolling prairie that characterizes the Reservation landscape causes the widely dispersed rural reservation ranch houses to be located on the lee side of hills and at the bottom of the many ravines. These locations are very difficult to serve by radio, presenting a tremendous challenge to provide universal broadband wireless service across the rural areas of the Reservation; 3) technical obstacles have been encountered, including difficulties extending the Browning cell site into East Glacier Park (which have been largely resolved); and 4) while the Blackfeet Tribe and Siyeh have been cooperative and supportive partners in developing and operating Oki, both have been unable to date to invest all of the capital that the BTBC pledged in May of 2006, effectively making Oki

dependent on RTC and CommunityTel for most of its capital spending and delaying its efforts to expand outside of the community of Browning (this issue is explained in more detail below).

Approximately 60% of the population of the Blackfeet Indian Reservation is concentrated in and around the townsite of the community of Browning, but the remainder are widely scattered over a vast area of the remaining reservation land (a total of 2,344 square miles). According to the 2000 U.S. Census, the Browning area census tract (encompassing approximately 10.8 square miles) has a population of 5,050, compared to the total population of the Reservation of 10,100. The broadband data transmitter installed by Oki serves Browning and the surrounding area, and can be used by a total of 5,989 people, or approximately 59.3% of the Reservation population. The larger area in and around Browning where the service can be used is approximately 200 square miles. A portion of this area runs along Cut Bank Creek, which flows through a ravine where the signal is unusable, which is an area of approximately 15 square miles, leaving a net effective service area of approximately 185 square miles. In addition to the townsite of Browning, this served area includes the much smaller towns of Starr School (a "Census Defined Place" with a population of 248) and Blackfoot (which is undefined by the census).

In the latter part of 2007, Oki expanded its service into the small community of East Glacier Park, utilizing a repeater, RF microwave and partial cell site arrangement. This cell site serves approximately 543 more people and covers an area of approximately 17 square miles. This addition expanded service from 59.3% to 64.6% of the Reservation population, which is 10.4% short of the 75% build-out requirement. As 2008 comes to a close, Oki has been working towards serving the town of Cut Bank (the Cut Bank townsite itself lies directly east of the eastern boundary of the Reservation). This cell will serve rural residents of the eastern flank of the Blackfeet Reservation within an approximate 15 mile radius west of the town of Cut Bank, including numerous wheat

farms and a tribal housing development directly west of Cut Bank, known as Seville. Oki plans to turn up the Cut Bank cell site in mid-December, 2008 and plans to offer service from this site to the public in and around Cut Bank and Seville in January of 2009. With the addition of the Reservation area west of Cut Bank, a total of approximately 70% of the Reservation population will be able to be served by Oki (only 5% short of the requirement).

In addition, Oki is in the planning stages to extend the service into the St. Mary Valley and cover the communities of St. Mary and Babb. Oki plans to complete this extension during 2009. The addition of the St. Mary Valley will add approximately 5% to the portion of the Reservation population that has access to Oki services, and should therefore fulfill the 75% build out requirement.

The remaining 25% of the Reservation population (approx. 2,525) is widely scattered over more than 1,800 square miles of very rural reservation land. Therefore, the population density of the remainder of the Reservation is only 1.4 persons per square mile (the entire reservation, including Browning has a population density of only 4.3 persons per square mile, with the Browning Census Tract having the much larger population density of over 450 persons per square mile). This very low population density outside the Browning area and the other townsites coupled with the tendency of rural ranch houses on the Reservation to be built on the lee side of hills and at the bottom of ravines for shelter from the area's high winds (which also weakens radio signals) creates significant technological and economic obstacles to the short term universal provision of quality wireless broadband data services on the Blackfeet Reservation.

Several obstacles preclude the ability of Oki Communications to construct and operate additional transmitters prior to the current build-out deadline (January 29, 2009). These include current (and not unexpected) financial constraints of the start-up venture, including the inability of the BTBC to contribute all of its capital commitments to the venture (the BTBC has only been able to invest \$100,000 of its \$204,000 capital



commitment, to date). One of Oki Communications' many operational problems is the lack of a cost effective data transport infrastructure between the isolated rural community of Browning and the open internet.<sup>6</sup>

In addition to the problems described above, gaining access to Rights-of-Way needed to access hilltop transmitter sites is almost always problematic in Blackfeet country. Many of the parcels that Oki will need to cross to reach these sites are owned in "undivided partial interest" by many individual descendants of the original "allottee" owner. In these cases, every owner of an "undivided partial interest" in a parcel must agree in order for an easement to be granted. This gives every owner of a minor percentage of each parcel veto power over the granting of easements.

The long winters and severe winter weather common on the Blackfoot Reservation also limits the construction season available to Oki, and long winters combined with summer land closures due to fire danger can severely restrict construction seasons to only late spring and early fall.

RTC, the Blackfeet Tribe and Siyeh have put forward significant good faith efforts, including the formation of a unique tribal/private partnership venture named Oki Communications, and the construction of a system that now serves the largest community on the Reservation (Browning is almost ten times larger than the next largest town on the Reservation), the immediately surrounding area, and East Glacier Park (comprising a total of approximately 64.6% of the Reservation population). Oki is now in the process of completing facilities that will extend service into the Reservation area west of Cut Bank, which will serve an additional 5% of the population (which will total approximately 70%

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<sup>6</sup> The community of Browning is served for wireline voice service out of the Browning exchange of the incumbent LEC, 3 Rivers Telephone Cooperative. Consequently, T-1 special access service provided to internet carriers by 3 Rivers was the only short term option for Oki to gain upstream access to the open internet. Oki currently uses Sprint T-1 service to access the internet, and is forced to pay approximately \$1,000 per MB per month for this service. Oki is in the process of converting to an ethernet transport service provided by VisionNet (also delivered to Browning by 3 Rivers) which is much more cost effective, and will reduce Oki's transport costs to less than half the cost of T-1 internet access.

of the Reservation). This partnership has continued to evolve for over five years.

Granting the requested additional extension will facilitate the continued evolution of this partnership, including Oki's ability to extend its wireless broadband data services to the remaining outlying communities. Oki plans to serve at least an additional 5% during 2009, which will fulfill the requirement that 75% of the reservation population have access to Oki's service.

The process of conceiving, forming and organizing an innovative tribal/private partnership venture, for the purpose of providing telecommunications services on the Reservation, and obtaining the necessary capital between tribal and non-tribal entities was and is a unique concept that has evolved into a challenging and time consuming task, and has involved a great deal of original thought and joint effort of the parties. As a result, only after much time and effort was the new entity, Oki Communications, LLC, formed in the summer of 2006. An agreement that provided for eventual tribal control was essential to gain the Tribe's participation, by honoring and advancing the Tribe's paramount policy goal of enhancing tribal sovereignty. The limited availability of funding from tribal sources (recently increased by \$50,000 in June, 2008 and currently budgeted for an additional \$50,000 in the current 2008/2009 fiscal year budget) and two unsuccessful attempts by the Tribe to secure grant funding over the last five years has also slowed progress on the project.

Broader technical and market problems continue to exist which have hampered construction, delayed progress, and kept costs high. The delay at the federal level in implementing the digital TV transition until February, 2009 has delayed robust development of wireless data systems in the 700 MHz spectrum by national and international wireless data system vendors. The number of vendors who have made systems available in this spectrum remains very limited, even though future prospects are

now more encouraging.<sup>7</sup> The combination of all these factors has consequently impeded robust development of cost effective equipment and systems for this band.

The system Oki Communications has selected to utilize is compatible with the Cable TV broadband data standards (DOCSIS) – this system was chosen because Siyeh operates the CATV system in Browning and East Glacier Park. This broadband wireless system has not been deployed in any mass markets because of the delays previously described. This problem continues to make the construction of these 700 MHz wireless data systems quite expensive. The high costs that result from the relatively small volume of sales for systems currently available in the 700 MHz spectrum further impedes Oki Communications' ability to quickly serve multiple communities at an affordable cost. The business plan for Oki predicts that the total cost of constructing and operating Oki to positive cash flow will consume more than \$400,000 in capital. Both RTC and the BTBC are now in the process of attempting to raise the additional capital needed to serve the St. Mary/Babb area. The success of the service in Browning and East Glacier Park, and an additional extension of the build-out deadline by the FCC, will largely determine the ability of Oki to expand into these other smaller communities.

## **POLICY REASONS AND SUMMARY**

Under the circumstances described above, RTC requests an additional extension of 12 months (until January, 2010) of the TLBC build-out requirement on the Blackfeet Indian Reservation. While Oki has expanded into East Glacier Park and is now in the final stages of expanding its service into the area west of Cut Bank prior to the current deadline (which will cover approximately 460 additional people on the Reservation and will bring the percentage of the population of the Reservation covered up to 69.2% from 64.6%).

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<sup>7</sup> The spectrum auction that re-assigned the remainder of the 700 MHz spectrum, held in 2008, coupled with AT&T's purchase of the 700 MHz "C" Block licenses held by Aloha Partners at a substantial premium over the 2002 auction price, is an encouraging sign that beneficial economies of scale will soon develop for equipment in this band.

The existing circumstances make it impossible to provide useable service to 75% of the population of the Reservation at the present time. RTC has used its best diligent efforts during the last five years to overcome the business, governmental, legal, financial, geographical and technical obstacles involved in bringing reliable 700 MHz wireless broadband data service to the Blackfeet Reservation. Both RTC and the Tribe have surmounted what is perhaps the highest hurdle, the cultural barriers to creating the tribal/private collaboration that Oki represents. However, all of these efforts have expended substantial time and resources. Tremendous progress has been made, but more time is needed to successfully complete this project, with the ultimate goal of establishing an economically sound and tribally controlled entity to provide the Blackfeet Reservation with high-quality reliable wireless telecommunications data services.

RTC respectfully requests that it not be penalized (by requiring repayment of the TLBC) for the extra time which has been necessary to plan and develop an entirely new tribal/private partnership concept and the resulting business enterprise, in the face of business, cultural, technical and other challenges on the Reservation. The goal of this new concept-- a successful sovereign tribal telecommunications business-- is well worth the additional time and effort, and is in accord with the goals of the FCC's Indian Telecom Initiative, under which the Tribal Lands Bidding Credit was created. In addition, the national regulatory and market uncertainties that affect the new use of the 700 MHz spectrum is similarly beyond RTC's control. Failure to grant an extension would penalize the Blackfeet Indian Tribe, one of the very entities which both Federal treaty obligations and FCC Indian Telecommunications Initiative policies are designed to assist. Such an unwarranted penalty should not occur just as RTC's and the BTBC's efforts are finally poised to succeed. This penalty would cripple this effort to create a unique tribal/private partnership that creatively enables this enterprise while honoring the underlying principle of tribal sovereignty. FCC policy strongly supports the goals of this project. First, the promotion of Tribal sovereignty, cultures, businesses and economies. Second, the

provision of wireless broadband data service in sparsely populated rural areas. And third, the promotion of increased telecommunications competition in a poor rural tribal community whose telecommunications' market is currently dominated by a single ILEC cooperative.<sup>8</sup> The FCC stated, in its initial 2000 Report and Order on extending service to tribal lands:

[w]e are willing to consider relaxing our buildout requirements in cases where parties can demonstrate that doing so will expedite deployment of service to tribal lands. We therefore encourage parties to file specific waiver requests if need be, and commit to consider such requests expeditiously. In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266, 15 FCC Rcd 11794, 11809, ¶41 (2000).

Furthermore, the Commission has explicitly recognized that "technical obstacles" and "economic factors" may justify an extension of the construction requirement.<sup>9</sup> Denial of this waiver/extension request would severely impede RTC's ability to continue to invest in Oki Communications, effectively starving the enterprise of badly needed capital. Granting the waiver and extension requested herein would promote all of these FCC policies and strengthen the government-to-government relationship between the FCC and the Blackfeet Nation. Approval will allow the expansion of competitive telecommunications services on the Blackfeet Reservation to expand, and will facilitate the provision of sorely needed broadband data service in rural areas of the Reservation where only dial-up service is currently available. Most importantly, approval will promote the Tribe's long term goal of advancing an eventually independent tribally controlled telecommunications business

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<sup>8</sup> See e.g., In the Matter of Trustee in Bankruptcy for Magnacom Wireless, LLC and Telecom Wrap Up Group, LLC; Petition for Waiver of Extension of Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 9535, at ¶¶6-8 (2002) (granting extension of buildout requirement on tribal lands), *citing*, In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order*, 15 FCC Rcd 11794 (2000) (promoting wireless telecommunications services on tribal lands is consistent with the FCC's objectives under the Telecommunications Act); See, 15 FCC Rcd at 11801-11802, ¶¶18-20.

<sup>9</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783, at ¶22 (March 14, 2003).

entity that will enhance the Blackfeet Tribes' sovereignty and economic well-being.

WHEREFORE, based upon the foregoing, RTC respectfully requests an extension of the construction requirement for the tribal lands of 700 MHz Band License area Montana RSA 1 - Lincoln (CMA 523), specifically, within the Blackfeet Indian Reservation. RTC requests a 12 month extension of the construction requirement of the TLBC, to allow additional time to address and resolve the economic, terrain and technical obstacles to completion of the system. Accordingly, RTC requests a waiver of 47 C.F.R. §1.2110(f)(3)(vii), and an extension of 12 months, until January 2010.

DATED: November 21, 2008

Respectfully Submitted,

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